

#30

COTI & FLICKER
ATTORNEYS AT LAW
18 EAST 53RD STREET
NEW YORK, NEW YORK 10022
(212) 319-5240

TELECOPIER 212-888-5271

TELEX 135-095

RALPH COTI*

KEITH L. FLICKER**

*ADMITTED IN N.Y., N.J. AND D.C.

**ADMITTED IN N.Y. AND N.J.

16756
RECORDATION NO. 16756
FILED 148

FEB 8 1990 -4 15 PM

February 6, 1990

16756
RECORDATION NO. 16756
FILED 148

FEB 8 1990 -4 15 PM

INTERSTATE COMMERCE COMMISSION

NEW JERSEY OFFICE
ONE BRIDGE PLAZA
SUITE 400
FORT LEE, NEW JERSEY 07024
(201) 592-5029

FEDERAL EXPRESS
INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
Recordation Unit - Room 2303
12th Street and Constitution Avenue
Washington D.C. 20423

0-040A013

Gentlemen:

I forward herewith:

1. This firm's check in the amount of \$30.00 payable to the order of Interstate Commerce Commission.
2. Original Conditional Sale Agreement between Trenton Works Lavalin Inc. and Canadian National Railway Company.
3. Original Conditional Sale Agreement Assignment between Trenton Works Lavalin Inc. as assignor and Sun Life Assurance Company of Canada and The Mutual Life Assurance Company of Canada as assignees.

I request that you arrange for the recordation of these instruments as interests against the cars described therein and that you return the recorded instruments to me.

If you have any questions or comments, do not hesitate to telephone.

Thank you very much.

Very truly yours,

COTI & FLICKER

By: Ana M. Rodriguez
Legal Assistant

AMR/ar
Encl.

COTI & FLICKER
ATTORNEYS AT LAW
18 EAST 53RD STREET
NEW YORK, NEW YORK 10022
(212) 319-5240
TELECOPIER 212-888-5271
TELEX 135-095

RALPH COTI*
KEITH L. FLICKER**
*ADMITTED IN N.Y., N.J. AND D.C.
**ADMITTED IN N.Y. AND N.J.

RECORDATION NO 1675-6 FILED 1425
FEB 8 1990 -4 15 PM
INTERSTATE COMMERCE COMMISSION

NEW JERSEY OFFICE
ONE BRIDGE PLAZA
SUITE 400
FORT LEE, NEW JERSEY 07024
(201) 592-5029

February 9, 1990

FEDERAL EXPRESS

Interstate Commerce Commission
Recordation Unit - Room 2303
12th Street and Constitution Avenue
Washington D.C. 20423

Attn: Ms. Mildred Lee

Ms. Lee:

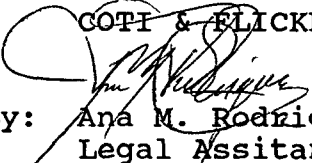
As per our telephone conversation of today, I forward herewith an additional copy of the following documents for your records.

1. Conditional Sale Agreement between Trenton Works Lavalin Inc. and Canadian National Railway Company.
2. Conditional Sale Agreement Assignment between Trenton Works Lavalin Inc. as assignor and Sun Life Assurance Company of Canada and The Mutual Life Assurance Company of Canada as assignees.

Upon completion of the recordation of these instruments, please return same to me.

If you have any questions or comments, do not hesitate to telephone.

Very truly yours,

COTI & FLICKER

By: Ana M. Rodriguez,
Legal Assitant

AMR/ar
Encl.

RECORDATION NO 1675-6 FILED 1425
FEB 8 1990 -4 15 PM
INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
Washington, D.C. 20423

2/15/90

OFFICE OF THE SECRETARY

Ana M. Redriquez
Legal Assistant
Coti & Flicker
18 East 53rd St
New York, N.Y. 10022

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/8/90 at 4:15pm and assigned recordation number(s). 16756 & 16756-A

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

16756
RECORDATION NO. _____ FILED 1425

FEB 8 1990 -4 15 PM
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

TRENTON WORKS LAVALIN INC.
as Vendor

- and -

CANADIAN NATIONAL RAILWAY COMPANY
as Purchaser

in respect of

Sixty 5 Platform Articulated
Intermodal Well Cars

Dated as of November 15, 1989

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SCHEDULES

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3. PAYMENT SCHEDULE
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5. FORM OF BILL OF SALE
6. FORM OF LETTER RE: PURCHASE PRICE AND INTEREST

Handwritten signature

CONDITIONAL SALE AGREEMENT

THIS CONDITIONAL SALE AGREEMENT dated as of the 15th day of November, 1989.

BETWEEN:

TRENTON WORKS LAVALIN INC., a corporation incorporated under the laws of Canada (the "Vendor")

AND:

CANADIAN NATIONAL RAILWAY COMPANY, a corporation constituted under the laws of Canada (the "Purchaser")

WHEREAS the Vendor is a manufacturer of articulated intermodal well cars; and

WHEREAS the Purchaser wishes to buy articulated intermodal well cars;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall, except where the context otherwise requires, have the following meanings:

"Acceptance Certificate" means an acceptance certificate issued as provided in Clause 3 substantially in the form set forth in Schedule 1;

"Advance" or "Advances" means the disbursement of funds by Sun Life Assurance Company of Canada and The Mutual Life Assurance Company of Canada to Trenton Works Lavalin Inc. pursuant to the Credit Agreement;

"Agreement" means this conditional sale agreement together with the recitals and schedules (which form an integral part

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hereof) as originally executed by the parties hereto, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof or as rights or obligations hereunder may be assigned or transferred from time to time in accordance with the terms hereof;

"Business Day" means a day, excluding Saturday, Sunday and any other day which shall be in the City of Montreal, Province of Quebec, or the City of Toronto, Province of Ontario, Canada, a legal holiday or a day on which financial institutions are required by law or by local proclamation to close;

"Canadian Bond Rate" means, with respect to any Advance, the arithmetic average of the yields determined in writing and addressed to each of the parties by each of the Reference Dealers as being the yield to maturity, calculated as at the Interest Determination Date for such Advance, on the outstanding issue of Government of Canada Bonds bearing interest at the rate of 9.25% per annum and maturing on May 1st, 1996;

"Canadian Dollars" and the sign "\$" each means the lawful currency of Canada;

"Credit Agreement" means a credit facility dated as of the 29 day of December 1989, (or such other date as notified by the Vendor to the Purchaser) entered into between Trenton Works Lavalin Inc. as borrower and Sun Life Assurance Company of Canada and The Mutual Life Assurance Company of Canada as lenders or other lenders as the case may be;

"Default Rate" means the rate of interest specified at Clause 5.3 hereof;

"Delivery Date" means a day on which the Equipment or any Unit thereof is delivered, but in any event, shall not be later than February 28, 1990;

"Drawdown Date" means a Business Day on which an Advance is to be made pursuant to the Credit Agreement;

"Equipment" means and includes the sixty (60) 5 platform articulated intermodal well cars (each car being referred to as a Unit) described in Schedule 2 hereto, delivered to the Purchaser prior to February 28, 1990, and includes any unit substituted for a Unit in the case of an Event of Loss pursuant to Clause 12.16 hereof but excludes any Lost Unit which the Purchaser has not replaced pursuant to the provisions of such Clause 12.16;

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"Event of Default" means any of the events or circumstances set out in Clause 14.1;

"Event of Loss" means, in relation to a Unit or, where applicable, the Equipment, any of the following events:

- (a) actual total loss of such Unit;
- (b) the destruction or damage of the Unit rendering it unfit for use in commercial transport if repair is, in the reasonable opinion of the Purchaser, uneconomic;
- (c) the disappearance or theft of the Unit which results in a loss of possession or use thereof by the Purchaser or the lawful possessor thereof at the relevant time for a period in excess of one hundred and twenty (120) consecutive days unless the location of the Unit is known and the Purchaser is diligently pursuing recovery of the Unit;
- (d) the condemnation, confiscation, seizure or possession of a Unit for a period of more than ninety (90) consecutive days or the requisition for use or hire of the Unit (other than as referred to in (e)) for a period of more than ninety (90) consecutive days by any government;
- (e) requisition of title, forfeiture or any compulsory acquisition whatsoever of the Unit (otherwise than by requisition for use or hire) by any governmental or competent authority or by any person acting or purporting to act by authority of the same and whether de jure or de facto for a period in excess of six (6) consecutive months or, where the Purchaser is able to satisfy the Vendor within such period that appropriate steps have been taken to repossess the Unit, for a period of twelve (12) consecutive months;
- (f) the non use of the Unit for a period of twelve (12) consecutive months as a result of action by any governmental or competent authority unless, prior to expiration of such period, the Purchaser has been diligently pursuing all necessary steps to permit normal use of the Unit;

"Final Payment" means the sum to be determined in accordance with the provisions of Schedule 3;

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"Final Payment Date" means February 28, 2000;

"First Payment Date" means August 28, 1990;

"Government of Canada Yield" means the arithmetic average of the yields determined in writing and addressed to each of the parties by each of the Reference Dealers as being the yield to maturity, calculated as at the Prepayment Date and assuming semi-annual compounding, which a non-callable Government of Canada Bond would carry if issued in Canadian Dollars in Canada at 100% of its principal amount on the Prepayment Date with a term to maturity equal to the remaining term to the Final Payment Date;

"Interest" means the interest determined in accordance with Clause 5.2 hereof;

"Interest Determination Date" means, with respect to any Delivery Date, the date which is three Business Days before the Drawdown Date of an Advance covering the Units referred to in the Statement of Purchase Price and Interest with respect to such Units;

"Instalment Amount" means the amounts, or the aggregate thereof, as the case may be, specified in Schedule 3 hereof;

"Lost Unit" means a Unit of the Equipment referred to in Clause 12.16 hereof;

"Parts" means all appliances, components, accessories, instruments, modules, parts, appurtenances, accessories, furnishings or other equipment of any kind (other than complete Unit) which may from time to time be incorporated or installed in or attached to the Equipment or any Unit;

"Payment Date" means the date referred to in Clause 5.1 hereof and specified in Schedule 3;

"Prepayment Date" means the date specified in a notice given pursuant to Clause 13.1 as being the date on which a prepayment will be made by the Purchaser to the Vendor;

"Purchase Price" means the sum specified in Schedule 2 or such other amount which may be mutually agreed by the parties;

"Purchase Price per Unit" means the sum specified in Schedule 2 or such other amount which may be mutually agreed by the parties;

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"Reference Dealers" means RBC Dominion Securities Inc., Burns Fry Limited and Wood Gundy Inc. or other dealers as may be mutually agreed by the parties;

"Statement of Purchase Price and Interest" means the particulars of the Interest and of the Purchase Price with respect to the Units specified therein, such statement to be in the form of Schedule 4 hereof;

"Successor Corporation" has the meaning ascribed to it in Clause 16.3;

"Unit" means one five (5) platform articulated intermodal well car forming part of the Equipment;

"Vendor's Interest" means Vendor's ownership, title to and property interest in the Equipment and each Unit;


1.2 Unless the context otherwise requires or unless otherwise provided, all references to Clauses, Subclauses, Articles and Schedules are to Clauses, Subclauses, Articles and Schedules to this Agreement. The words "hereto", "herein", "hereof", "hereunder" and similar expressions mean and refer to this Agreement.

1.3 The headings of Articles, Clauses, Subclauses or paragraphs herein and the Table of Contents are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

1.4 In this Agreement, unless otherwise specifically provided, the singular includes the plural and vice versa, "month" means calendar month, and "person" or "Person" includes any individual, company and corporation; "in writing" or "written" includes printing, typewriting or any electronic means of communication, capable of being visibly reproduced at the point of reception, including telex, telecopier or telegraph.

1.5 Each accounting term used in this Agreement has the meaning assigned to it under generally accepted accounting principles in Canada unless otherwise defined herein and reference to any balance sheet item or income statement item means such items as computed from the applicable statement prepared in accordance with generally accepted accounting principles in Canada.

1.6 Unless otherwise indicated in this Agreement, any reference to a time shall mean local time in the City of Montreal.



1.7 Any act or deed required to be observed, performed or done hereunder falling on a day other than a Business Day shall be observed, performed or done on the next following Business Day.

2. AGREEMENT TO SELL AND PURCHASE

2.1 Subject to the terms and conditions hereof, the Vendor agrees to sell and hereby sells to the Purchaser on a conditional basis and the Purchaser agrees to purchase and hereby purchases and agrees to accept from the Vendor on a conditional basis, the Equipment.

3. DELIVERY AND ACCEPTANCE

3.1 Delivery and acceptance of the Equipment shall take place on the Delivery Date F.O.R. Purchaser's interchange, at Trenton, Nova Scotia. Immediately upon such delivery and acceptance the Purchaser shall become liable to pay to the Vendor the outstanding balance of the Purchase Price per Unit of the Units so delivered in accordance herewith.

3.2 Concurrently with delivery and acceptance of the Equipment or of any Unit thereof pursuant to Clause 3.1, the Purchaser shall execute the Acceptance Certificate and the Statement of Purchase Price and Interest relating thereto and deliver same to the Vendor or its assign(s).

3.3 Execution and delivery of the Acceptance Certificate by the Purchaser shall evidence and constitute irrevocable, final and conclusive acceptance of the Equipment by the Purchaser for all purposes hereof and shall irrevocably confirm that the Equipment is satisfactory in all respects and complies with the requirements of this Agreement, the whole subject however to the Vendor's warranties relating to the manufacture of the Equipment.

4. REGISTRATION

4.1 The Vendor shall cause this Agreement to be duly deposited, registered or filed, re-deposited, re-registered or re-filed with the office of the Registrar General of Canada, and the required notice of such deposit shall, forthwith thereafter be published in the Canada Gazette in accordance with the relevant provisions of the Railway Act (as amended from time to time) R.S.C. 1985, c. R-3 and in the United States of America, with the Interstate Commerce Commission in accordance with the relevant provisions of the Interstate Commerce Act (as amended from time to time) 66 Stat. 724, 49 U.S.C. (1952).

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5. **PAYMENT OF PURCHASE PRICE AND INTEREST**

5.1 Subject to the other terms and conditions of this Agreement, the Purchaser covenants and agrees to pay to the Vendor the Purchase Price, together with Interest thereon calculated at the annual percentage rates specified in Clause 5.2, as follows:

- (a) the Purchaser did, on November 23, 1989, remit a sum of \$1,588,310.70 to be applied towards the Purchase Price. A sum of \$26,471.85 is to be applied to the Purchase Price per Unit for each Unit delivered on a Delivery Date (the "Deposit per Unit"). The Vendor hereby acknowledges receipt thereof and confirms that it has been so applied.
- (b) subject to the provisions of Clause 5.3, the outstanding principal amount of the Purchase Price together with Interest thereon computed from February 28, 1990 shall become due and payable by way of (i) twenty (20) consecutive semi-annual installments (each such installment to include both principal and Interest), determined on the basis of an amortization period of 15 years, commencing on August 28, 1990; and (ii) the balance of said outstanding principal amount and Interest thereon shall become due and payable on the Final Payment Date; the whole in accordance with Schedule 3 hereof.

5.2 The outstanding principal amount of the Purchase Price of the Equipment or of a Unit, as applicable, shall bear interest at a rate per annum equal to the Canadian Bond Rate less fifteen one-hundredths percent (15/100%) per annum. Such interest shall be payable in accordance with Clause 5.1.

Upon determination by the Reference Dealers of the rate of interest applicable to an Advance made with respect to the Equipment or the Units delivered, as the case may be, the Vendor or its assigns shall notify in writing the Purchaser of such rate, which will be thereafter specified in the letter to be sent by the Purchaser to the Vendor, in the form of Schedule 6 hereto, pursuant to Clause 5.4(11) hereof. Each such determination of the applicable rate of interest in respect of the Purchase Price pursuant to this Clause 5.2 shall, in the absence of manifest error, be final, conclusive and binding.

5.3 Upon a default in payment of Interest or Purchase Price hereunder, interest on the overdue principal amount of the Purchase Price outstanding hereunder from time to time

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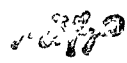
(i) shall be payable on demand and (ii) shall accrue at the rate per annum determined in accordance with Clause 5.2 hereof, increased by one percentage point, together with interest on all overdue interest and on all other sums due by the Purchaser hereunder at the same increased rate from the date of such default for so long as such default shall continue, before and after demand and judgment.

5.4 The Purchaser shall:

- i) on a Delivery Date forthwith upon the delivery of the Equipment or any Unit thereof and upon the remittance by the Purchaser of the Acceptance Certificate with respect thereto, deliver to the Vendor or its designated assign(s) a duly executed Statement of Purchase Price and Interest in the form of Schedule 4 hereof for the Purchase Price per Unit less the Deposit per Unit of the Units so delivered, with interest thereon at the rate specified therein; and
- ii) on or before a Drawdown Date, written notice of which shall have been given by the Vendor or its assigns to the Purchaser, remit to the Vendor or its designated assign(s) a letter in the form of Schedule 6 hereto confirming its agreement to the replacement of the interest rate specified in Clause 5.4(i) as set out in the applicable Statement(s) of Purchase Price and Interest, by the Interest determined pursuant to Clause 5.2.

6. TITLE

6.1 It is hereby agreed that this Agreement is a conditional sale agreement and that notwithstanding delivery of the Equipment to the Purchaser hereunder or any other matter whatsoever, the Vendor or its assigns shall retain the Vendor's Interest, and ownership and title to the Equipment shall be reserved to the Vendor or its assigns until payment in full by the Purchaser of the Purchase Price and all other amounts that shall become due and payable under this Agreement. Upon payment in full by the Purchaser as aforesaid, title to the Equipment shall, without further act, pass to the Purchaser, and the Vendor or its assigns shall deliver to the Purchaser a bill of sale in the form of Schedule 5 hereof for the Equipment further evidencing the passing to the Purchaser of the Vendor's title and any remaining right or interest in and to the Equipment, free and clear of any lien created by, through or for the benefit of the Vendor or its assigns.



6.2 The Vendor hereby agrees with the Purchaser that, unless and until such time as an Event of Default shall have occurred and be continuing and this Agreement shall have been declared to be in default, neither the Vendor nor its assigns shall interfere with or deprive the Purchaser of peaceful and quiet enjoyment of the Equipment.

7. PAYMENT

7.1 All payments to be made and other charges to be paid pursuant to this Agreement shall be made in Canadian Dollars for value on the day such amount is due and if such day is not a Business Day, on the Business Day next following, by payment or transfer of monies to the Vendor or its assigns.

7.2 The Purchaser shall pay the Purchase Price and Interest thereon, and any other amounts owing hereunder on the due date thereof. Notwithstanding anything herein contained or the provisions of any statute or law, or the provisions of any other agreement between the Vendor and the Purchaser, the obligations of the Purchaser to pay such Purchase Price and Interest thereon and other amounts shall be absolute and unconditional under all circumstances, including, without limiting the generality of the foregoing, damage to or the loss, theft or destruction of the Equipment, or any Unit, Part or accessory thereof, from any reason or cause whatsoever. The Purchaser shall have no right or claim whatsoever, present or future, against the Purchase Price or Interest thereon or other payment due hereunder and agrees to pay the Purchase Price and Interest thereon and other amounts to become due hereunder regardless of any claim in the nature of a set-off or compensation or otherwise which may be asserted by Purchaser or on its behalf.

7.3 Except as otherwise provided for in this Agreement, nothing contained herein shall preclude the Purchaser from enforcing any of its rights against the Vendor with respect to the Equipment which it may otherwise have under any other agreement with the Vendor.

8. CONDITIONS PRECEDENT

8.1 The obligations of the Vendor hereunder are subject to the following conditions precedent being fulfilled to the satisfaction of, or waived by, the Vendor on or before the Delivery Date, such obligations ceasing if the same are not so fulfilled or waived, as the case may be.

- (a) the Vendor having received five executed copies of this Agreement;

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- (b) the Vendor having received the favourable opinion of the Purchaser's Counsel, as to the corporate status and capacity of the Purchaser, its authority and legal right to enter into and observe and perform the terms and obligations on its part to be observed and performed under this Agreement and documents contemplated thereby, as to the validity, binding effect and enforceability of this Agreement;
- (c) the Vendor having received the Acceptance Certificate as required by Clause 3.2, duly executed by the Purchaser;
- (d) the Vendor having received the Statement of Purchase Price and Interest specified at Clause 5.4(i) hereof.

8.2 The terms and conditions of Clause 8.1 are inserted for the sole benefit of the Vendor and may be waived by the Vendor, in whole or in part, with or without terms or conditions, without prejudicing the rights of the Vendor to assert such terms and conditions in whole or in part.

9. VENDOR'S REPRESENTATIONS AND WARRANTIES

- 9.1 1) Except as otherwise provided in this Agreement the Vendor does not make, give or be deemed to have made or given, and the Vendor hereby expressly disclaims any representation or warranty, express or implied as to the value, condition, merchantability, design, operation or fitness for use for any purpose of the Equipment or any Part thereof, or any other representation or warranty whatsoever (including any statutory condition or warranty of Canada or any Province thereof), express or implied, with respect to the Equipment or any Part thereof, it being agreed that all risks incidental thereto are to be borne by the Purchaser and that the Vendor or its assigns shall not have any responsibility or liability with respect thereto. It is the responsibility of the Purchaser to inspect the Equipment and to satisfy itself as to the condition, quality, suitability and fitness of the Equipment for the Purchaser's purposes.
- ii) the Vendor hereby represents and warrants that the Purchaser shall have peaceable enjoyment of the Equipment after the Equipment has been delivered to the Purchaser provided that the Purchaser keeps and performs each and every covenant, condition or

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agreement to be performed or observed by it hereunder. The Vendor agrees that it shall, at its own cost and expense, take such actions as may be necessary to promptly cure any breach of this warranty arising from any claims, liens, security interests or other encumbrances created by any person claiming by, through or for the benefit of the Vendor.

9.2 The Vendor hereby represents and warrants to the Purchaser that:

- (a) the Vendor is a company duly incorporated and organized and validly existing under applicable law of Canada with all requisite corporate power and authority to carry on its business and operations in each jurisdiction in which it carries on business or operations;
- (b) the Vendor has all requisite corporate power and authority to execute, deliver and perform this Agreement; none of the execution, delivery and performance hereof do or will require the consent of any person having jurisdiction over the Vendor (save for any consent or approval which has been obtained, which is in full force and effect) and each of the same has been duly authorized by all necessary corporate and legal action on the part of the Vendor; none of the same does or will contravene or cause a material breach of any provision of any applicable law binding on the Vendor or its property or its Articles of Incorporation or any indenture, mortgage, contract or other agreement or instrument that is material to the business, assets or financial condition of the Vendor to which the Vendor is a party or by which it is or any of its property may be bound;
- (c) the Vendor has taken all necessary legal action to authorize the persons who execute and deliver this Agreement on behalf of the Vendor, to execute and deliver the same and thereby bind the Vendor to all of the terms and conditions of the same and to act for and on behalf of the Vendor as contemplated hereby;
- (d) this Agreement constitutes the legal, valid and binding obligation of the Vendor enforceable against the Vendor in accordance with its terms, subject only to such qualifications with respect

[Handwritten signature]

thereto relating to creditors' rights generally and the enforcement of equitable remedies;

- (e) the Vendor is not in default under any agreement or instrument to which it is a party or by which it or any of its property may be bound or in relation to any applicable law binding on it or its property and there are no current, pending or, to the knowledge of the Vendor, threatened proceedings against the Vendor or any of its property before any court or governmental or administrative agency or any arbitral body or other person which defaults or proceedings (if adversely determined) would reasonably be expected to materially impair the ability of the Vendor to perform its obligations under this Agreement.

9.4 The representations and warranties given by the Vendor herein shall survive the execution and completion of this Agreement until all of the obligations of the Vendor hereunder have been fulfilled.

10. VENDOR'S COVENANTS

10.1 During the term of this Agreement the Vendor covenants and agrees that:

- (a) the Vendor will not, without the prior written consent of the Purchaser, amend or consent to the amendment of any agreements or other documents relating to the Equipment or this Agreement which might reasonably be expected to have a material adverse effect on the Purchaser;
- (b) the Vendor shall diligently pursue, for the benefit of and at its expense, all of its rights and remedies under all agreements and documents to which it is a party.

11. PURCHASER'S REPRESENTATIONS AND WARRANTIES

11.1 The Purchaser hereby represents and warrants to the Vendor that:

- (a) the Purchaser is a corporation duly incorporated and organized and validly existing under the laws of Canada with full corporate power and authority to carry on its business and operations and to own its property in each jurisdiction in which it carries on business or operations or owns property;

- (b) this Conditional Sale Agreement has been duly authorized, executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (c) the entering into and performance of this Conditional Sale Agreement will not result in any breach of, or constitute a default under any indenture, mortgage, deed of trust, loan or credit agreement or other agreement or instrument to which the Purchaser is a party or by which it may be bound, or contravene any provision of law, statute, rule or regulation to which the Purchaser is subject, or any judgment, decree, franchise, order or permit applicable to the Purchaser; and
- (d) there are no actions, suits or proceedings pending or, to the knowledge of the Purchaser, threatened against the Purchaser or its properties or affecting this Conditional Sale Agreement or the transactions contemplated hereby which could, if adversely determined, materially or adversely affect the carrying out of such transactions.

11.2 The representations and warranties given by the Purchaser herein shall survive the execution and completion of this Agreement until all amounts payable hereunder have been paid in full.

12. PURCHASER'S COVENANTS

12.1 The Purchaser will duly and punctually pay the principal of and Interest (including any interest on amounts in default) on the outstanding balance of the Purchase Price, as well as all other amounts due hereunder, on the dates, at the places and in the manner mentioned herein.

12.2 The Purchaser shall deliver to the Vendor, within 120 days from the end of each fiscal year of the Purchaser or as soon thereafter as the same may become available, a copy of the Purchaser's annual report.

12.3 On or before April 1 in each year hereunder commencing with the year 1991, the Purchaser will furnish to the Vendor an Officer's Certificate as of the preceding January 1, (a) showing the amount, description and numbers of each Unit then purchased hereunder, the amount, description and number of each Lost Unit during the preceding 12 months (or since the date hereof, in the case of the first such statement), and (b) stating that, in the case of any Unit


repainted or repaired during the period covered by such statement, the markings required by Article 12.10 hereof shall have been preserved or replaced.

The Purchaser shall also promptly notify the Vendor of any requirements by any governmental authority (of which it has knowledge or should have knowledge as a railway operator) which shall require any action to be taken by the Vendor in consequence of its ownership of any Unit and the Purchaser shall promptly furnish to the Vendor from time to time such information as may be required to be filed by the Vendor with any governmental authority because of the Vendor's Interest in any Unit.

12.4 At all reasonable times hereunder, the Vendor or its authorized representatives upon reasonable notice, may inspect at its sole risk and expense the Equipment and the books and records of the Purchaser relating thereto. The Vendor shall have no duty to make any such inspection and shall not incur any liability or obligation by reason of not making any such inspection.


12.5 The Purchaser shall preserve and maintain its corporate existence and all of its rights, privileges and material franchises in every jurisdiction in which the character of the property owned or the nature of the business transacted by it makes licensing or qualification necessary.

12.6 The Purchaser shall not at any time, directly or indirectly, create, incur, assume or suffer to exist any hypothec, mortgage, pledge, lien, privilege, charge, encumbrance or other security interest or any claim on or with respect to any Unit, title thereto or any interest therein, except (i) the respective rights of the Vendor and the Purchaser as herein provided, (ii) liens or privileges or other encumbrances which result from claims against the Vendor for which the Purchaser is not responsible pursuant to the terms hereof, (iii) any security interest created by the Vendor in any Unit and any liens or privileges arising out of liabilities of the Vendor, (iv) liens or privileges for taxes of the Vendor or the Purchaser either not yet due or being contested in good faith and with due diligence and by appropriate proceedings so long as such proceedings do not involve any risk of the sale, forfeiture or loss of any Unit or any interest therein, (v) liens or privileges imposed by law such as materialmen's, mechanics', vendors', worker's, repairmen's, employees' or other like liens or privileges arising against the Purchaser or the Vendor in the ordinary course and not delinquent, (vi) the rights of others as permitted by the provisions of Clause 12.12 hereof, and (vii) liens or privileges on the Purchaser's interest under this Agreement



arising out of judgments or awards against the Purchaser with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and with due diligence and with respect to which there shall have been obtained a stay of execution pending such appeal or proceeding for review. The Purchaser will promptly, at its own expense, take such action as may be necessary to duly discharge any such hypothec, mortgage, pledge, lien, privilege, charge, encumbrance, security interest or claim not excepted above if the same shall arise at any time, provided that the Purchaser shall not be required to discharge the same if and so long as it shall in good faith and with due diligence and by appropriate legal or administrative proceedings contest the validity, applicability or amount thereof (but only so long as such proceedings shall stay enforcement thereof and shall not in the Vendor's judgment involve any risk of sale, forfeiture or loss of any Unit or any interest therein).

12.7 The Purchaser agrees to pay and to indemnify and hold the Vendor or its assigns as the case may be harmless from, on an after-tax basis, all taxes, assessments, duties, license and registration fees and other governmental charges, including penalties and interest (hereinafter collectively referred to as "Taxes") imposed, levied or assessed by any federal, provincial or local government or taxing authority in Canada, or, if as a result of the operation, possession or use of any Unit by or through the Purchaser in any foreign country, by any government or taxing authority in a foreign country, against such Unit or upon or measured by any interest therein, or upon or with respect to the purchase, ownership, delivery or possession thereof by the Vendor, or upon or with respect to the use, possession or operation thereof by the Purchaser, or on account of or measured by the earnings or gross receipts arising therefrom (including any payment or indemnity under this agreement), provided that the Purchaser shall not be required to pay the same (or any amount by way of indemnity of the Vendor or otherwise pursuant to this clause) if and so long as it shall in good faith and with due diligence and by appropriate legal or administrative proceedings contest the validity, applicability or amount thereof (but only so long as such proceedings shall stay the collection thereof and shall not involve any risk of the sale, forfeiture or loss of any Unit or any interest therein). If a claim is made against the Vendor for any Taxes, then the Vendor shall use its reasonable efforts to notify the Purchaser promptly and, if so requested by the Purchaser, shall at the Purchaser's expense contest the validity and amount of any Taxes which it may be required to pay and in respect of which it is entitled to reimbursement by the Purchaser under this clause so long as the rights or



interests of the Vendor hereunder or in such Unit will not be materially endangered thereby.

Notwithstanding the provisions of this Clause 12.7 the Purchaser shall have no obligation thereunder as to:

- (i) any Taxes on, based on or measured by the net income including without limitation capital gains of the Vendor imposed i) by Canada, a province or other local taxing authority in Canada or ii) by any foreign government or any taxing authority or governmental subdivision of a foreign country to the extent allowed as a credit against income taxes imposed by Canada, a province, or other local taxing authority taking into account any applicable limitation on the aggregate amount of such credit and after assuming that all other Taxes of the Vendor for the same or prior periods which qualify for such credit are first allowed;
- (ii) any Taxes on, based on, or measured by, the net income including without limitation capital gains of the Vendor imposed by any foreign government or any taxing authority or governmental subdivision of a foreign country by virtue of the Vendor being engaged in business in such foreign country through activities unrelated to the transactions contemplated by this Agreement to the extent the Purchaser's obligation as to such Taxes would otherwise exceed the amount of such Taxes which would be payable if the Vendor were not so engaged in such business;
- (iii) any Taxes which are or may become imposed by Canada on payments being made under this Agreement to a non-resident of Canada (as defined in the Income Tax Act (Canada)); or
- (iv) any Provincial capital taxes or the Federal Large Corporations Tax or any other similar taxes imposed i) by Canada, a province or other local taxing authority in Canada or ii) by any foreign government or any taxing authority or governmental subdivision of a foreign country.

In the event any reports with respect to Taxes are required to be made, the Purchaser will either make such reports in such manner as to show the interests of the Vendor in such Units, or notify the Vendor of such requirement, and will make such reports in such manner as shall be satisfactory to the Vendor.

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12.8 The Purchaser shall at its own expense at all times hereunder service, repair, maintain and overhaul the Equipment and replace all defective, worn out or unusable Parts which may from time to time be incorporated or installed in or attached to or otherwise included as part of the Equipment so as to keep the Equipment and each Unit thereof in as good operating condition as when delivered to the Purchaser hereunder, ordinary wear and tear excepted.

12.9 The Purchaser shall not maintain, use or operate the Equipment or any Unit thereof in violation of any law or any rule, regulation or order of any government or governmental authority, or association (domestic or foreign) having jurisdiction, or in violation of any license or registration relating to the Equipment issued by any such authority. In the event that such laws, rules, regulations or orders shall at any time require alteration of any Unit and have not been waived by the appropriate authority or association and, in the case of any such waiver, the failure to make such alteration does not materially adversely affect the Vendor or involve any danger of sale, forfeiture or loss of such Unit, the Purchaser shall conform thereto before operating such Unit all at no expense to the Vendor, and will maintain the same in proper operating condition under such laws, rules, regulations and orders, provided, however, that the Purchaser may, in good faith and with due diligence (after having delivered to the Vendor an Officer's Certificate stating the facts with respect thereto), contest by appropriate proceedings the validity or application of any such law, rule, regulation or order in any reasonable manner which does not, in the Vendor's opinion, materially adversely affect the Vendor or involve any danger of sale, forfeiture or loss of such Unit.

12.10 The Purchaser will cause each Unit to be kept numbered with the identifying number set forth in Exhibit A attached to each Acceptance Certificate and will as soon as practicable mark each Unit and will thereafter keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than three-eighths of an inch in height, identification marks to be notified in writing by the Vendor to the Purchaser, with appropriate changes therein and additions thereto as from time to time may be required by law in order to protect the Vendor's Interest and the rights of the Vendor under this Agreement. The Purchaser will not change or permit to be changed the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement shall be promptly filed with the Vendor by the Purchaser and filed, recorded or depo-

sited in all public offices where this Agreement will have been filed, recorded or deposited.

Except as above provided, the Purchaser will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that, the Purchaser may cause such Unit to be lettered with the names or initials or other insignia customarily used by the Purchaser or any lessee referred to under Clause 12.12 hereof on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use such Unit as permitted under this Agreement.


12.11 The Purchaser will, from time to time and at its expense, do and perform any act and will execute, acknowledge, deliver and file any and all further instruments required by law or reasonably requested by the Vendor or its assigns for the purpose of proper protection, to the satisfaction of the Vendor and its counsel, of the Vendor's Interest hereunder in the Equipment, or for the purpose of carrying out the intention of this Agreement. The Purchaser will promptly furnish to the Vendor evidence of such execution, acknowledgement, delivery and filing.

12.12 The Purchaser shall not, without the prior written consent of the Vendor, assign, deliver, transfer or otherwise relinquish possession or dispose of any Unit or assign any of its rights hereunder, provided, however, that, so long as no Event of Default (or an event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) shall have occurred and be continuing, the Purchaser shall be entitled to the possession of any Unit and to the use thereof by it or any affiliated or subsidiary corporation upon its or their lines of railroad or upon lines of railroad over which the Purchaser or such other corporation has trackage or other operating rights or over which railroad equipment of the Purchaser or any such other corporation is regularly operated pursuant to contract, and also to permit the use of any Unit upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Agreement and without in any way relieving the Purchaser from any obligation or liability hereunder.

Nothing in this Clause 12.12 shall be deemed to restrict the right of the Purchaser (i) to assign or transfer its interest under this Agreement in the Equipment or possession of the Equipment to any corporation incorporated under the laws of Canada (which shall have duly assumed the obligations of the Purchaser hereunder) into or with which the

Purchaser shall have become amalgamated, merged or consolidated or which shall have acquired the property of the Purchaser as an entirety or substantially as an entirety; or (ii) to lease any Unit to such subsidiary or affiliated corporations of the Purchaser as are at the time such lease is executed domestic railroad corporations incorporated under the laws of Canada or any province thereof or any state of the United States of America or the District of Columbia; provided, however, that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement. No such lease shall relieve the Purchaser of any liability or obligation hereunder which shall be and remain that of a principal and not a surety.

12.13 The Purchaser, at its own expense, shall promptly replace all Parts which may from time to time be incorporated or installed in or attached to or otherwise included as part of a Unit and which may at any time become worn out, lost, stolen, destroyed, seized, confiscated, damaged but repairable, damaged beyond repair or temporarily or permanently rendered unfit for use for any reason whatsoever. In addition, in the ordinary course of maintenance, service, repair and overhaul, the Purchaser may remove or otherwise deal with any Parts, whether or not worn out, lost, stolen, destroyed, seized, confiscated, damaged but repairable or damaged beyond repair or temporarily or permanently rendered unfit for use, provided that the Purchaser shall replace such Parts as promptly as possible. All replacement Parts shall be free and clear of all liens, privileges and other encumbrances and rights of others (except for those permitted under Clause 12.6 (iv), (v) and (vii) hereof and shall be in as good operating condition as, and shall have a value and utility at least equal to, that required by the terms of this Agreement with respect to the Parts replaced. All Parts at any time removed from or otherwise not incorporated or installed in or attached to a Unit shall remain the property of the Vendor, no matter where located, until such time as such Parts shall be replaced by parts which have been incorporated or installed in or attached to or otherwise become part of such Unit and which meet the requirements for replacement Parts specified above. Immediately upon any replacement part becoming incorporated or installed in or attached to or otherwise part of such Unit as above provided, without further act (i) title to the replaced Part shall thereupon vest in the Purchaser, without recourse to or warranty of, the Vendor, (ii) title to such replacement part shall thereupon vest in the Vendor (free and clear of all liens or privileges except for those permitted under 12.6 (iv), (v) and (vii) hereof, and (iii) such replacement part shall become subject to this Agreement and deemed Part of such Unit for all purposes hereof to the same extent as the Part originally



incorporated or installed in or attached to or otherwise part of such Unit.

12.14 The Purchaser, at its own expense, may from time to time make such alterations or modifications in or to and additions to any Unit as the Purchaser may deem desirable in the proper conduct of its business, provided that no such alteration, modification or addition diminishes the value or utility of such Unit, below the value, utility and condition thereof immediately prior to such alteration, modification or addition and provided further that such Unit was then in the condition required to be maintained by the terms of this Agreement. Title to all Parts incorporated or installed in or attached or added to or otherwise becoming part of such Unit as the result of any such alteration, modification or addition shall be free and clear of all liens, privileges and other encumbrances and rights of others and shall, without further act, vest in the Vendor, provided, however, the Purchaser may, so long as no Event of Default (or an event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) shall have occurred and be continuing, remove any Part from such Unit which (i) is in addition to, and not in replacement of or substitution for, any Part incorporated or installed in or attached to or otherwise part of such Unit upon delivery thereof on the Delivery Date or any Part in replacement of or substitution for any such Part, (ii) is not required to be incorporated or installed in or attached or added to or otherwise to be part of such Unit pursuant to the terms of Clauses 12.8, 12.9 or 12.13 hereof or this Clause 12.14, and (iii) can be removed from such Unit without diminishing or impairing the value or utility which such Unit would have had at such time had such Part not been installed thereon or incorporated therein, or otherwise part thereof. Upon the removal by the Purchaser of any such Part, title thereto shall, without further act, vest in the Purchaser and such Part shall no longer be deemed part of the Unit from which it was removed, provided, however, that any Part not removed by the Purchaser as above permitted or upon repossession by the Vendor hereunder, if any, shall remain the property of the Vendor without any compensation being required to be paid by the Vendor to the Purchaser and provided further that nothing in the two preceding sentences shall be deemed to change or diminish in any respect the Purchaser's obligations under Clauses 12.9 and 12.12 to 12.14 hereof inclusive.

12.15 The Purchaser shall at all times hereunder provide insurance on the Equipment as self-insurer.

12.16 Upon the occurrence of an Event of Loss with respect to any Unit (a "Lost Unit") at any time hereunder, the

Purchaser shall, promptly after it shall have determined that an Event of Loss has occurred, notify the Vendor or its assigns thereof and, within 30 days after such determination, it may replace such Lost Unit with another unit of equivalent value, utility and condition. The obligation of the Purchaser to pay the Purchase Price shall continue without abatement regardless of the occurrence of such Event of Loss. Upon the replacement of such Lost Unit as in this Clause provided, the Purchaser shall sign all such documents and do all such things as may be reasonably required by the Vendor to convey good and marketable title to such replacement Unit to the Vendor free and clear of all liens, hypothecs, mortgages, charges and other encumbrances.

If the Purchaser is reasonably unable or chooses not to replace such Lost Unit as aforesaid, the Purchaser shall pay to the Vendor, on the next succeeding Payment Date (or, in the event such Payment Date will occur within 15 days after such notification, on the following Payment Date) (such date being hereinafter called a "Casualty Payment Date") a sum equal to the Casualty Value (as hereinafter defined in this Clause) of such Unit suffering an Event of Loss as of the date on which such payment is made (regardless of the date on which the determination that the Unit has suffered an Event of Loss is made) and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such Unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to pay the unpaid balance of the Purchase Price of such Lost Unit and the prepayment premium, if any. The Vendor will promptly furnish or cause to be furnished to the Purchaser a revised Schedule 3 of payments of principal and interest thereafter to be made.

Upon payment by the Purchaser to the Vendor of the Casualty Value of any Unit of the Equipment having suffered an Event of Loss, the Vendor's Interest in such Unit will terminate and the Purchaser shall have the absolute right to the possession of, title to and property in such Unit without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Purchaser, will execute and deliver to the Purchaser, at the expense of the Purchaser, an appropriate Bill of Sale in the form of Schedule 5.


The Casualty Value of each Unit of the Equipment suffering an Event of Loss shall be deemed to be that portion of the Purchase Price thereof remaining unpaid on the Payment Date with respect to such Unit (taking into account payments of principal and Interest paid on such date). The Purchaser shall also pay a prepayment premium, if any, provided for in, and calculated with respect to the Casualty Value in the same

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manner as in Clause 13.1(b), where (i) the Government of Canada Yield less fifteen one-hundredths percent (15/100%) per annum shall be substituted for the Government of Canada Yield, which shall be determined by the Reference Dealers five (5) Business Days prior to the Casualty Payment Date and (ii) the Casualty Payment Date shall be substituted for the Prepayment Date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Clause 5.1 hereof shall be deemed to be a payment on each Unit of the Equipment in like proportion as the Purchase Price of such Unit bears to the aggregate Purchase Price of the Equipment.

12.17 The Purchaser does hereby assume liability for, and does hereby agree to indemnify, protect, save and keep harmless the Vendor and any assignees of rights hereunder from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind and nature imposed on, incurred by or asserted against the Vendor in any way relating to or arising out of (i) any action or inaction by the Purchaser in connection with this Agreement and the transactions contemplated hereby, (ii) the ownership, possession, use, operation, maintenance, alteration, storage, delivery, return or other disposition of a Unit by any person or organization, (iii) the condition (including, without limitation, latent and other defects with respect thereto, whether or not discoverable by the Vendor or the Purchaser) of a Unit or the Equipment, (iv) any act or failure to act by the Purchaser relating to the Equipment or a Unit or (v) any claim for patent, trade-mark or copyright infringement in connection with a Unit; provided that the Purchaser shall not be required to indemnify the Vendor for loss or liability resulting from (a) the breach by the Vendor of any warranty, term, agreement or condition of this Agreement or (b) the misconduct or negligence of the Vendor, its servants and agents.

The Purchaser shall be obligated under this Clause irrespective of whether the Vendor shall also be indemnified with respect to the same matter by any person and the Vendor may proceed directly against the Purchaser under this Clause. However, should the Vendor be so indemnified by any such other person, any indemnity received, after deduction of the cost and expenses (including legal fees) of the Vendor, shall be applied towards the reduction of the indemnity payable by the Purchaser under this Clause or, if already paid by the Purchaser, remitted by the Vendor to the Purchaser to the extent necessary to reimburse the Purchaser for indemnification payments previously made hereunder.



Upon the payment in full of any indemnities as contained in this Clause by the Purchaser, the Purchaser shall be subrogated, to the extent of the amount of any such indemnity paid by the Purchaser to the Vendor, to any right of the Vendor in respect of the matter against which the indemnity has been given. The Vendor agrees that to the extent any of the foregoing rights and remedies are not assignable, the Vendor, for and on behalf of the Purchaser, and at the Purchaser's expense, shall exercise such rights and remedies. The amount of an indemnity required to be paid under this Clause shall be computed so that the Vendor receives full indemnification net after any taxes required to be paid or made in respect of such indemnity payment under the laws of Canada or for any province thereof (after giving credit for any savings available to the Vendor in respect of any taxes by reason of deductions, credits or allowances in respect of the payment of the expenses indemnified against).

The Purchaser agrees to give to the Vendor and the Vendor agrees to give to the Purchaser prompt notice of any claim or liability hereby indemnified.

The indemnities contained in this Clause shall survive the termination of this Agreement and are expressly made for the benefit of and shall be enforceable by the Vendor and shall extend to its successors or assigns.

13. PREPAYMENT

13.1 The Purchaser may, subject to the prior written consent of the Vendor, which shall be at the sole discretion of the Vendor, at any time prepay in whole but not in part the Purchase Price outstanding hereunder, subject to the following terms and conditions:

- (a) the Purchaser shall provide the Vendor with irrevocable written notice of prepayment not less than (30) days prior to the anticipated date of prepayment; and
- (b) the Purchaser shall pay to the Vendor on or prior to the Prepayment Date, in addition to any other amounts payable hereunder, a prepayment premium equal to the amount, if any, by which:
 - (i) the present value as at the Prepayment Date, using a discount rate equal to the Government of Canada Yield, of all payments of principal and interest which, in the absence of the occurrence of an Event of Default, would be

payable to the Vendor from the Prepayment Date up to and including the Final Payment Date,

exceeds:

- (ii) the principal amount of the Purchase Price outstanding on the Prepayment Date.

13.2 Upon payment by the Purchaser of all the amounts referred to herein the Vendor shall remit to the Purchaser a Bill of Sale in the form of Schedule 5 hereof.

14. **EVENTS OF DEFAULT AND REMEDIES**

14.1 Each of the following events shall constitute an Event of Default:

- (a) the Purchaser shall fail to pay any Instalment Amount or to pay any other amount payable by the Purchaser hereunder within five (5) Business Days after notice in writing is given by the Vendor or its assigns to the Purchaser that such payment has not been made when due and payable;
- (b) any material representation or warranty made by the Purchaser herein shall prove to have been incorrect in any material respect when made and such condition shall continue unremedied for a period of thirty (30) Business Days after written notice thereof has been given to the Purchaser hereunder;
- (c) the Purchaser shall fail to perform or observe in any material respect any other covenant, condition or provision of this Agreement, and such failure to perform is not remedied within thirty (30) Business Days after receiving written notice from the Vendor of such failure to perform;
- (d) if the Purchaser becomes an insolvent person within the meaning of the Bankruptcy Act (Canada) and remains so for more than thirty (30) days;
- (e) if the Purchaser makes an assignment for the general benefit of creditors or makes an assignment in bankruptcy;
- (f) if a Petition or Receiving Order in Bankruptcy is filed against the Purchaser and the Petition or Receiving Order is not dismissed, stayed or withdrawn within sixty (60) days after filing of such Petition or Receiving Order;

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- (g) if the Purchaser files a proposal under the Bankruptcy Act (Canada) or any statute passed in substitution thereof;
- (h) any proceeding (other than a Petition or Receiving Order referred to in Clause 14.1(f)) shall be commenced by or against the Purchaser for any relief under any bankruptcy or insolvency laws or laws relating to any reorganization (other than a reorganization undertaken otherwise than in contemplation of its inability or likely inability to meet its obligations when due), arrangement, compromise or winding up in any jurisdiction and if commenced by a person other than the Purchaser, such proceeding is not dismissed within sixty (60) days of the commencement thereof unless and for so long as the Purchaser shall be contesting such proceeding in good faith with all due diligence and by appropriate proceedings.

14.2 Upon the occurrence of an Event of Default, the balance of the Purchase Price outstanding shall become immediately due and payable with Interest payable on the balance outstanding at the Default Rate set out in Clause 5.3 of this Agreement. The Vendor, at its option, and in addition to and without prejudice to any other remedies provided for herein or existing under applicable law, may enter upon the Purchaser's premises, and, without court order or other process of law or notice, repossess and remove any or all the Equipment. Any such repossession shall not constitute a termination of this Agreement unless the Vendor so notifies the Purchaser in writing. The Vendor, at its option, may (i) lease such repossessed Equipment, or any part thereof, to any third party upon such terms and conditions as the Vendor may determine, or (ii) sell such repossessed Equipment or any part thereof to the highest bidder at public auction or private sale. The net proceeds of such leasing or sale, less the Vendor's expenses incurred in connection therewith and in connection with said repossession, including legal fees, shall be applied to the outstanding principal amount of the Purchase Price together with Interest thereon, and the Purchaser shall pay the Vendor any deficiency. The Vendor may also as a matter of right retain all payments made hereunder as liquidated damages from the Purchaser for its failure to fulfill its obligations under this Agreement, and recover the full unpaid balance as well as any other damages and expenses, including legal fees, the Vendor may have sustained because of the Purchaser's default.

The Purchaser expressly waives any action, cause of action, claim or demand which it may have by reason of any



act which the Vendor, its assignee or their agents may do or leave undone in connection with the repossession of the Equipment and releases and discharges the Vendor of and from action, causes of action, claims and demands of every kind and nature which may arise as a result of any action of the Vendor, its assignee or their agents in connection with this Agreement or the Equipment, its repossession or resale or the condition or use thereof.

14.3 Pending sale of the Equipment the Vendor shall be entitled to manage, insure, maintain and repair the same and to employ, lay up, lease, charter, operate or otherwise use the Equipment in such manner and for such period as it thinks fit and to do all acts incidental thereto and to recover any losses incurred as a consequence of taking any such action as aforesaid, and all payments due to the Purchaser by virtue of the leasing, hiring or other disposal of the Equipment or otherwise howsoever arising prior to the enforcement hereof by the Vendor shall immediately on receipt thereof be and become due to the Vendor and form part of the Purchase Price.

14.4 Upon any sale of the Equipment by the Vendor the Purchaser shall not be bound or entitled to see or enquire whether the power of sale has arisen or remains exercisable in the manner herein provided or whether the Vendor has given the Purchaser notice of its intention to sell, and the sale shall be deemed to be within the power of the Vendor.

14.5 Any sale by the Vendor of the Equipment in pursuant of the rights, powers and remedies conferred upon it by this Agreement or by law may be for cash, debentures or other debt instruments and the consideration may be payable or deliverable forthwith or over a period of time. If any consideration for any such sale is not in cash, that consideration shall immediately on receipt thereof be and become charged in favour of the Vendor with the payment of all sums at that time secured by this Agreement.

14.6 The powers conferred upon the Vendor are and shall be cumulative and shall be in addition to every other power and remedy hereby specifically conferred or now or hereafter existing at law or by statute. Each and every power and remedy may be exercised from time to time and as often and in such order as may be deemed expedient by the Vendor and the exercise or the beginning of the exercise of any power or remedy shall not be construed or implied to be a waiver of the right to exercise any other power or remedy at the same time or thereafter. No delay or omission by the Vendor in the exercise of any right or power or pursuant to any remedy shall impair any such right, power or remedy or be construed

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or implied to be a waiver of any default on the part of the Purchaser or to be an acquiescence therein.

14.7 Except as otherwise specifically stipulated herein, the Vendor need not before exercising any of the rights, powers or remedies conferred upon it by this Agreement or by law:

- (i) take action or obtain judgment against the Purchaser or any other person in any court, or
- (ii) make or file any claim or proof in a winding-up or liquidation of the Purchaser.

14.8 Subject to Clause 14.2 hereof, in the event of the occurrence of any Event of Default (in addition to the Purchaser's obligations in respect thereof), the Purchaser hereby agrees to and shall indemnify the Vendor against all costs, losses, charges, expenses (including reasonable legal fees), damages, penalties or premiums incurred thereby or imposed thereon as a result thereof or in connection therewith.

14.9 The Vendor may, without prejudice to its rights with respect to any other event which may constitute an Event of Default, waive in writing any Event of Default or extend the time period for remedying any Event of Default.

15. **DELETED**

16. **SUCCESSORS AND ASSIGNS**

16.1 This Agreement shall be binding upon and enure to the benefit of the Purchaser, the Vendor and their respective successors and permitted assigns, provided that, except as provided in Clause 12.12 and Clause 16.3, the Purchaser may not assign any of its rights or transfer or purport to transfer any of its obligations hereunder without the express prior written consent and approval of the Vendor.


16.2 The Vendor may assign, sell, transfer (including a transfer of the Purchaser's obligations hereunder), negotiate or otherwise dispose of or sell or grant a right of participation in all or any part of its rights, obligations and interest under this Agreement, to any subsidiary or affiliate of it or to any bank, leasing company, insurance company or other financial institution without the prior consent of the Purchaser, but not to any other person unless the Purchaser shall have given its prior written consent thereto, which shall not be unreasonably withheld, provided that no such assignment, sale, transfer, negotiation or sale or grant of a

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right of participation in, or other disposal shall: (i) render the Purchaser liable for any increased cost or additional amount including Taxes for which it would not have been otherwise liable for hereunder had such assignment, sale, transfer, negotiation or other disposal not been made; or (ii) affect the Purchaser's quiet enjoyment of the Equipment; or (iii) relieve or discharge the Vendor from any of its obligations under this Agreement. The Vendor agrees to indemnify and hold harmless the Purchaser for any increased cost or additional amount sustained by the Purchaser as a result of any such assignment, sale, transfer, negotiation or other disposal. Upon such assignment, sale or transfer as hereinabove contemplated, the Vendor shall forthwith advise in writing the Purchaser of such an assignment, sale or transfer.

16.3 Nothing contained in this Agreement shall prevent any consolidation, amalgamation or merger of the Purchaser with or into any other corporation or corporations (whether or not affiliated with the Purchaser) or successive consolidations, amalgamations or mergers in which the Purchaser or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance or lease of all or substantially all the property of the Purchaser to any other corporation (whether or not affiliated with the Purchaser) authorized to acquire and operate the same (the "Successor Corporation"); provided, however, and the Purchaser hereby covenants and agrees, that upon any such consolidation, amalgamation, merger, sale, conveyance or lease, the due and punctual payment of the outstanding balance of the Purchase Price and Interest thereon, and the due punctual performance and observance of all of the covenants and conditions of this Agreement to be performed by the Purchaser, shall be expressly assumed, by supplemental agreement satisfactory in form to the Vendor or its assigns, executed and delivered to the Vendor or its assigns, by the Successor Corporation (if other than the Purchaser) formed by such consolidation or amalgamation, or into which the Purchaser shall have been merged, or by the corporation which shall have acquired or leased such property.

Whenever the conditions of this Clause 16.3 have been duly observed and performed, the Successor Corporation shall possess and from time to time may exercise each and every right and power of the Purchaser under this Agreement in the name of the Purchaser or otherwise and any act or proceeding under any provision of this Agreement required to be done or performed by any directors or officers of the Purchaser may be done and performed with like force and effect by the directors or officers of such Successor Corporation. Nothing hereinabove shall relieve or be deemed to



relieve the Purchaser of any liability or obligations hereunder which shall be and remain that of a principal and not a surety.

17. AMENDMENTS; SEVERABILITY

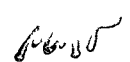
17.1 This Agreement may not be amended except in writing.

17.2 Any provision of this Agreement that is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

18. NOTICES

18.1 Every notice, request, demand or other communication under this Agreement:

- (a) shall be in writing and shall be sent by telex, telegram, telecopy or messenger (confirmed in the case of a telex, telegram or telecopy by prepaid first class letter sent within twenty-four (24) hours of dispatch but so that the non-receipt of such confirmation shall not affect in any way the validity of the telex, telegram or telecopy in question), as to each hereto, to it at its address set forth herein or at such other address as shall have been or be designated by it in a written notice to the other party hereto. All such notices, requests, demands, and other communications shall:
 - (i) if sent by messenger, be deemed to have been given upon receipt, and
 - (ii) if transmitted by telex, telegram or telecopy, be deemed to have been given on the next Business Day following the day it was sent;



(b) shall be sent to:

(i) if to the Vendor, at:

Trenton Works Lavalin Inc.
1100 René Lévesque Blvd. West
Montreal, Quebec, Canada
H3B 4P3

Attention: Jean Lamarre,
Vice-President, Finance
Groupe Lavalin Limitée

Fax: (514) 876-9273

(ii) if to the Purchaser, at:

Canadian National Railway Company
935 de la Gauchetière St. W.
Montreal, Quebec
H3B 2M9

Attention: Treasurer

Fax: (514) 399-8038

19. **EXPENSES**

19.1 Except as otherwise provided in this Agreement the Vendor agrees to pay all legal fees and expenses arising in connection with the closing of the transaction contemplated by this Agreement or in preserving or perfecting any of its rights hereunder.

20. **GOVERNING LAW**

20.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have executed this agreement as of the date and year first above written.

TRENTON WORKS LAVALIN INC.

Per: [Signature]
VICE CHAIRMAN

Per: [Signature]
DULY AUTHORIZED REPRESENTATIVE

CANADIAN NATIONAL RAILWAY
COMPANY



Per: [Signature]
Senior Vice-President &
Chief Financial Officer

Per: [Signature]
ASSISTANT SECRETARY

PROVINCE OF QUEBEC

CITY OF MONTREAL

On this 29th day of December, 1989, before me personally appeared M.A. Prénoveau to me personally known, who, being by me duly sworn, says that she is the Assistant Secretary of Canadian National Railway Company, that one of the seals affixed to the foregoing instrument is the seal of said Company, that said instrument was signed and sealed on behalf of said Company by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said Company.

M. J. Phippard
Commissioner for Oaths

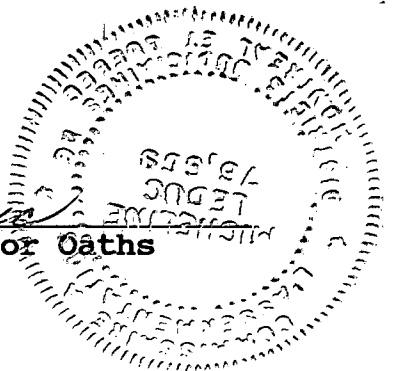
M.J. PHIPPARD
Commissioner for Oaths
Commissaire à l'Assermentation
District-Montreal
Expires December 12, 1991

PROVINCE OF QUEBEC

CITY OF MONTREAL

On this 9th day of January, 1990, before me personally appeared *Mr. Jacques Laman* to me personally known, who, being by me duly sworn, says that he is the *Vice-Chairman* of Trenton Works Lavalin Inc., that said instrument was signed on behalf of said Company by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Company.

Micheline Leduc
Commissioner for Oaths



SCHEDULE 1
TO
CONDITIONAL SALE AGREEMENT

FORM OF ACCEPTANCE CERTIFICATE

To: Trenton Works Lavalin Inc.
Main Street
P.O. Box 130
Trenton, Nova Scotia
V0K 1X0

From: Canadian National Railway Company
935 de la Gauchetière St. W.
Montreal, Quebec
H3B 2M9

I, the duly authorized representative of Canadian National Railway Company (the "Purchaser"), for the purposes of the Conditional Sale Agreement dated as of November 15, between Trenton Works Lavalin Inc. and the Purchaser, DO HEREBY CERTIFY that the Units of railroad equipment identified in Exhibit A hereto (the "Equipment") have been inspected on behalf of the Purchaser and found to be completed and marked in accordance with the said Conditional Sale Agreement and the applicable specifications, requirements and standards referred to in said Conditional Sale Agreement.

I further certify that the Units of Equipments have been delivered by the Vendor at Trenton, Nova Scotia, and fully and finally accepted by me on behalf of the Purchaser under the said Conditional Sale Agreement.

19__ Dated at Trenton, this ____ day of _____,

Inspector and Authorized Representative of
the Purchaser

MJP

EXHIBIT A

Description

Quantity

Serial Numbers

12/8/80

SCHEDULE 2
TO
CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Specification</u>	<u>Builder</u>	<u>Purchaser's Road Numbers (Both Inclusive)*</u>	<u>Number of Units</u>	<u>Unit Price</u>	<u>Total Price</u>	<u>Place of Delivery</u>
Five-Pak Articulated Intermodal Well Cars	CN Freight Equipment General Specification SS-1974 revised July 1976, CN Spec. F 50-21 dated April 1989, Builder's proposal dated 14 June 1989 and builders letters of 17 July, 2, 10, 14 August 1989 and CN letter of 3, 29 May, 11, 13, 14, 21, 27, 28 July, 4, 16 August 1989.	Trenton Works Lavalin Inc. Trenton, Nova Scotia	CN 679200 through CN 679499	60	\$266,170.95	\$15,970,257.00	Trenton, Nova Scotia

* Each Unit has 5 platforms and each platform is numbered consecutively.

[Handwritten signature]

SCHEDULE 3
TO CONDITIONAL SALE AGREEMENT

Subject to the other terms and conditions of this Agreement, the Purchaser covenants and agrees to pay to the Vendor the principal amount of all Advances made on account of the Purchase Price, together with Interest thereon calculated at the annual percentage rates specified in Clause 5.2 (referred to, in this Schedule 3, as the "Applicable Rate") by way of:

- (i) twenty consecutive semi-annual installments beginning August 28, 1990 and then on February 28 and August 28 of each year (referred to, in this Schedule 3, as the "Installment Dates") and
- (ii) the balance of the Purchase Price and Interest thereon on February 28, 2000.

Each semi-annual installment shall be the sum of two components calculated as follows:

- a) Principal Repayment Portion: On account of repayment of principal on each Installment Date, the Purchaser shall pay to the Vendor an amount equal to the principal repayment portion which would be included in the installment payable on the same date on a hypothetical loan made by the Vendor to the Purchaser in the same amount, bearing interest at a rate equal to the Applicable Rate plus 1.6% per annum and repayable by means of thirty (30) equal and consecutive semi-annual installments including both principal and interest with the first installment due on August 28, 1990.
- b) Interest: Together with the principal repayment portion calculated in accordance with (a) above, the Purchaser shall pay to the Vendor on each Installment Date Interest calculated at the Applicable Rate on the outstanding principal balance of the Purchase Price.

For greater clarity, the following example is provided assuming a 9.4% Applicable Rate for an Advance of \$1 million made on account of the Purchase Price on January 2, 1990:

- a) No interest is to be paid by the Purchaser to the Vendor pursuant to the terms of this Agreement for the period from January 2, 1990 to February 28, 1990.
- b) Beginning on August 28, 1990 and then on February 28 and August 28 of each year, the following payments would be made:

Semester	Date	Installment	Interest	Principal	Balance
0	28-Feb-90				\$1,000,000.00
1	28-Aug-90	\$60,805.39	\$47,000.00	\$13,805.39	\$986,194.61
2	28-Feb-91	\$60,915.83	\$46,351.15	\$14,564.69	\$971,629.92
3	28-Aug-91	\$61,032.35	\$45,666.61	\$15,365.74	\$956,264.18
4	28-Feb-92	\$61,155.28	\$44,944.42	\$16,210.86	\$940,053.32
5	28-Aug-92	\$61,284.96	\$44,182.51	\$17,102.46	\$922,950.86
6	28-Feb-93	\$61,421.78	\$43,378.69	\$18,043.09	\$904,907.77
7	28-Aug-93	\$61,566.13	\$42,530.67	\$19,035.46	\$885,872.31
8	28-Feb-94	\$61,718.41	\$41,636.00	\$20,082.41	\$865,789.90
9	28-Aug-94	\$61,879.07	\$40,692.13	\$21,186.95	\$844,602.95
10	28-Feb-95	\$62,048.57	\$39,696.34	\$22,352.23	\$822,250.72
11	28-Aug-95	\$62,227.38	\$38,645.78	\$23,581.60	\$798,669.12
12	28-Feb-96	\$62,416.04	\$37,537.45	\$24,878.59	\$773,790.54
13	28-Aug-96	\$62,615.07	\$36,368.16	\$26,246.91	\$747,543.63
14	28-Feb-97	\$62,825.04	\$35,134.55	\$27,690.49	\$719,853.14
15	28-Aug-97	\$63,046.56	\$33,833.10	\$29,213.47	\$690,639.67
16	28-Feb-98	\$63,280.27	\$32,460.06	\$30,820.21	\$659,819.46
17	28-Aug-98	\$63,526.83	\$31,011.51	\$32,515.32	\$627,304.14
18	28-Feb-99	\$63,786.96	\$29,483.29	\$34,303.66	\$593,000.48
19	28-Aug-99	\$64,061.39	\$27,871.02	\$36,190.36	\$556,810.12
20	28-Feb-2000	\$64,350.91	\$26,170.08	\$38,180.83	\$518,629.28
Final pmt	28-Feb-2000			\$518,629.28	\$0.00

c) On February 28, 2000, the remaining outstanding principal of \$518,629.00 would be paid at the same time as the twentieth installment of \$64,351.00.

On February 28, 1990, this Schedule 3 will be replaced by the Vendor by a new Schedule 3 showing the exact aggregate amounts of principal, interest and outstanding principal due or owed, as the case may be on each Installment Date and reflecting all Advances made on account of the Purchase Price and their Applicable Rate.

SCHEDULE 4
TO
CONDITIONAL SALE AGREEMENT

FORM OF STATEMENT OF PURCHASE PRICE AND INTEREST

Number of cars delivered:

Delivery Date:

Serial Numbers:

Purchase Price per Unit:

Deposit per Unit:

Total Purchase Price:

Balance Outstanding of total Purchase Price:

Interest Rate: 9.5% per annum

Subject to the provisions of the Conditional Sale Agreement dated November 15, 1989 between Trenton Works Lavalin Inc. and Canadian National Railway Company.

Dated this ____ day of _____, 19__.

CANADIAN NATIONAL RAILWAY COMPANY

Per: _____

12/4/89

SCHEDULE 5
TO
CONDITIONAL SALE AGREEMENT

FORM OF BILL OF SALE

Trenton Works Lavalin Inc. (or its assigns) (hereinafter called the "Seller"), for valuable consideration paid by CANADIAN NATIONAL RAILWAY COMPANY (hereinafter called the "Buyer"), at or before the execution and delivery of these presents, the receipt and sufficiency of which is hereby acknowledged, do hereby grant, bargain, sell, transfer, and set over unto the Buyer, its successors and assigns, the following described property:

ORIGINAL CAR IDENTIFICATION NUMBERS & <u>REPORTING MARKS</u>	CURRENT CAR IDENTIFICATION NUMBERS & <u>REPORTING MARKS</u>	ORIGINAL CAR IDENTIFICATION NUMBERS & <u>REPORTING MARKS</u>	CURRENT CAR IDENTIFICATION NUMBERS & <u>REPORTING MARKS</u>
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TO HAVE AND TO HOLD the above described property unto the Buyer, its successors and assigns, for its and their own use and behoof, forever.

And the Seller hereby warrants unto the Buyer, its successors and assigns that, as of the date hereof, the Seller has legal title to the aforesaid property and good and lawful right to dispose of said property, and the Seller, for itself, its successors and assigns, covenants that it will warrant and defend such title against all claims and demands whatsoever.

The Seller further warrants that the aforesaid property is free and clear of all claims, liens, security interests and other encumbrances of record by or in favour of any person claiming by, through, or under the Seller other

1122

than such claims, liens, security interests and other encumbrances which are the responsibility of the Buyer.

THE AFORESAID PROPERTY IS BEING SOLD HEREIN ON AN "AS IS" BASIS AND "WITH ALL FAULTS". THE SELLER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND EXPRESSLY DISCLAIMS LIABILITY FOR LOST PROFIT OR FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR COMMERCIAL LOSSES AND ALL OTHER OBLIGATIONS OR LIABILITIES.

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be executed in its name by a duly authorized representative on this _____ day of _____, _____.

TRENTON WORKS LAVALIN INC.



SCHEDULE 6
TO
CONDITIONAL SALE AGREEMENT

FORM OF LETTER RE: PURCHASE PRICE AND INTEREST

To: Trenton Works Lavalin Inc. ("Vendor")

Copy to: Sun Life Assurance Company of Canada

The Mutual Life Assurance Company of Canada
("Assignees")

Dear Sirs:

Re: 5 Platform Articulated Intermodal Well Cars

We refer to the Conditional Sale Agreement dated as of November 15, 1989 entered into between us and the Vendor, and assigned by you, the Vendor, to the Assignees, and more particularly to the Statement(s) of Purchase Price and Interest dated _____ issued pursuant to Clause 5.4(i) thereof, and we hereby wish to confirm that the interest rate specified therein is hereby replaced, retroactively to the date of the said Statement(s) of Purchase Price and Interest by the following interest rate:

Interest Rate: _____ per annum.

This interest rate, is and shall, for all purposes of the Conditional Sale Agreement hereinabove referred to, be used to calculate the interest referred to in Clause 5.2 thereof.



We further acknowledge and consent to the document attached hereto which becomes Schedule 3 to the Conditional Sale Agreement.

CANADIAN NATIONAL RAILWAY
COMPANY

Per: _____

Acknowledged and accepted by
the Vendor and the Assignees

Trenton Works Lavalin Inc.

Per: _____

Date:

Sun Life Assurance Company of Canada

Per: _____

Per: _____

The Mutual Life Assurance Company
of Canada

Per: _____

Per: _____